

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1144 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NALINCHANDRA NAROTTAM PANDYA

Versus

AJITKUMAR NAROTTAM PANDYA

Appearance:

MR YF MEHTA for Petitioner

MR KM PARIKH for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 2

NOTICE SERVED for Respondent No. 3, 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/02/99

ORAL JUDGEMENT

Rule. Mr K M Parikh, learned Advocate waives service of Rule for respondent No.1.

By the impugned order dated 1.8.1998, the Civil Judge (JD), Petlad rejected the petitioner's application Exh.80 for production of documents. The

respondent-plaintiff filed a suit on the basis of a Will executed by his late mother who expired in the year 1995. The plaintiff and the defendants are brothers. The defendants have taken the plea that the signature of the mother is forged. Thus application Exh.80 was filed for production of withdrawal form and the card which bears the admitted signatures of the late Mother of the parties. The learned Judge rejected the application on the ground that the examination-in-chief is over and there has been a partial cross-examination. It is also stated that it is not the stage when such a document should be allowed to be produced.

2. I have heard the learned Advocates for the parties. The issue before the trial court is as to whether the Will is genuine or not? In order to examine the genuineness of the signatures of the late Mother of the parties on the Will, some document is required to be produced which bears the admitted signatures of the late Mother. Ordinarily there should not be any difficulty if the document is coming from the institution like bank, which bears the admitted signatures of the deceased. Production of such documents will definitely facilitate the trial and that will be in the interest of both the parties. Thus, in my view, the learned Judge has committed material illegality in exercise of the jurisdiction in not permitting production of the relevant document. After such a document is produced which bears the admitted signatures of the executor of the will, the court can compare the signatures and arrive at its own conclusion. The court may also take decision for sending the signatures to handwriting expert, if any of the parties so applies. Handwriting expert will be able to express his opinion only when some document is produced before the Court which bears the admitted signatures of the deceased. Thus, in my view, the application Exh.80 deserves to be allowed.

3. In view of the aforesaid, this Revision Application is allowed and the impugned order dated 1.8.1998 passed by the Civil Judge (JD), Petlad below Application Exh.80 is granted. Interim relief granted earlier stands vacated. Direct Service is permitted.

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msp.